

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY L. WASHINGTON and U.S. POSTAL SERVICE,
OAKLAND MANAGEMENT SECTION CENTER, Oakland, Calif.

*Docket No. 97-546; Submitted on the Record;
Issued November 19, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On June 29, 1995 appellant, then a 42-year-old postal worker, filed an occupational disease claim alleging that he sustained stress and depression as a result of his federal employment. In an attached narrative statement, appellant stated that between February 5, 1991 and May 30, 1995 the employing establishment management refused to acknowledge that he had an ear injury and repeatedly denied his requests for light duty despite letters from his physicians recommending that he be transferred to a position with lower noise levels. As additional examples of employment stressors leading to his depressive emotional condition, appellant alleged that during this period he filed a claim for occupational hearing loss which was denied by the Office of Workers' Compensation Programs, he received letters of warning from the employing establishment for failure to follow instructions, he received a verbal warning for excessive use of sick leave, he was denied union representation, he was forced to work around noise, and he received, after he stopped work due to "stress," pressure to return to work and threats of termination even though he felt he was not ready. Additionally, appellant stated that although the employing establishment did actually approve one of his requests for light duty, he felt that the position he was given was not really light duty at all.

In support of his claim, appellant submitted medical reports from Drs. David Louis, Judy Brown, Robert C. Slawsky, and from the medical group at City Center and Medical Associates of Oakland. Appellant's physicians generally agree with a diagnosis of major depression and stress due to appellant's feelings of frustration, helplessness and powerlessness caused by the employing establishment's refusal to acknowledge and accommodate his hearing condition. Based on the recommendation of Dr. Louis, appellant stopped work on April 12, 1995.

In a letter received February 16, 1996, appellant requested an oral hearing. He stated that while he had not yet received a formal determination from the Office on his claim, he had received a copy of a letter dated June 14, 1995 from the employing establishment which denied his request for psychiatric treatment and noted that the Office had denied his stress claim. Appellant enclosed a copy of this letter with his request.

In a decision dated March 29, 1996, and accompanying memorandum, the Office denied appellant's claim on the grounds that the evidence failed to establish that appellant sustained an emotional condition in the performance of his duties. The Office specifically found that while the medical evidence of record establishes that appellant has an emotional condition, the employment factors claimed to have caused this condition are not considered to have occurred within the performance of duty.

In a subsequent decision issued May 5, 1995, the Office denied appellant's request for an oral hearing on the grounds that at the time of his request, a final decision on his claim had not yet been issued by the Office.

By letter dated July 19, 1996, appellant again requested an oral hearing and submitted additional evidence in support of his claim.

In a decision dated September 23, 1996, the Office denied appellant's request for an oral hearing on the grounds that his request was untimely and that the issues in appellant's claim could equally well be addressed by requesting reconsideration.

The Board finds that appellant has not met his burden of proof to establish that he developed an emotional condition in the performance of duty, causally related to factors of his federal employment.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment as contributing to his condition. Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by factors of his federal employment.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.³

In the present case, appellant has not substantiated a compensable factor of employment. The general standard for allegations involving administrative or personnel matters is that although these are related to employment, they are primarily duties of the employer rather than regular duties of the employee. In order to establish a compensable factor, there must be evidence of error or abuse by the employing establishment.⁴ Most incidents appellant identified as leading to his depressed emotional condition involved the employing establishment's refusal to acknowledge and accommodate his alleged ear pain and related hearing loss condition, for which he filed a prior claim. While a desire to work in a particular environment is generally not compensable under the Act, if in fact the environment prevents appellant from performing his work duties, such environment may constitute a compensable factor of employment under the Act.⁵ In the present case, appellant filed a prior claim for bilateral hearing loss which was denied by the Office. As appellant has not submitted any evidence to factually establish that he was exposed to loud or excessive noise such that he could not perform his employment duties and sustained an emotional condition as a result thereof, appellant has not established a compensable factor of employment in this regard. In addition, any emotional reaction appellant may have had to the Office's handling of his prior claim would have arisen out of actions of the Office, and not actions of the employing establishment, and therefore would not be compensable under the scope of the Act.⁶ Finally, with respect to appellant's allegation that the constant pain for his ear condition contributed to his stress, and eventually to his depression, the Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.⁷ As appellant's hearing condition has not been established as employment related, however, any condition arising out of pain caused by his ear condition is also not employment related.

Although the record contains medical evidence establishing that appellant has an emotional condition, as appellant has not established any compensable factors of his federal employment that he implicates in causing or contributing to the development of his emotional

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *See Donald E. Ewals*, 45 ECAB 111 (1993).

⁵ *See Lillian Cutler*, *supra* note 1. Problems encountered with loud or excessive noise while in the performance of regular or specially assigned duties may constitute a compensable factor; *see Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Virgil M. Hilton*, 37 ECAB 806 (1986).

⁷ *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

condition, appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board further finds that the Office did not abuse its discretion in denying appellant's requests for an oral hearing.

Section 8124(a) of the Act provides, in pertinent part, that a "claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁸ Appellant indicated in his letter requesting a hearing that although he had not yet received the Office's determination, he had received information from the employing establishment that his claim had already been denied. At the time of appellant's request, however, the Office had not in fact issued a final decision which would allow appellant to seek a hearing pursuant to section 8124 of the Act. The Office therefore properly denied appellant's initial request for hearing.

With respect to appellant's second request for a hearing, the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁹

In this case, the Office issued its decision denying appellant's claim for compensation benefits on March 29, 1996. Appellant's letter requesting a hearing was dated July 19, 1996 which was beyond 30 days from the date that the March 29, 1996 decision was issued. Because appellant did not request a hearing within 30 days of the Office's March 29, 1996 decision, he was not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request, and must exercise that discretion.¹⁰ In this case, the Office advised appellant that it considered this request in relation to the issue involved and the hearing was denied on the basis that the issues in claim could be equally well resolved by a request for reconsideration. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and

⁸ 5 U.S.C. § 8124(a).

⁹ *Henry Moreno*, 39 ECAB 475 (1988).

¹⁰ *William F. Osborne*, 46 ECAB 198 (1994); *Herbert C. Holley*, 33 ECAB 140 (1981).

probable deductions from established facts.¹¹ There is no evidence of an abuse of discretion in the denial of the hearing request in this case.

The decisions of the Office of Workers' Compensation Programs dated September 23, May 1 and March 29, 1996 are affirmed.

Dated, Washington, D.C.
November 19, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Daniel J. Perea*, 42 ECAB 214 (1990).